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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 vs.

9 JOSEPH FELIX,

10 Defendants.  
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Case No. 2:13-cr-00042-MMD-PAL

**ORDER**

(Mtn for Production - Dkt. #27)

12 This matter is before the court on Defendant Joseph Felix's Motion for Production of Grand  
13 Jury Transcript (Dkt. #27) filed on July 15, 2013. The court has considered the Motion.

14 On January 29, 2013, the grand jury returned an Indictment against Felix, charging him with one  
15 count of Possession of a Firearm by a Convicted Felon in violation of 18 U.S.C. §§ 922(g)(1) and  
16 924(a)(2). Defendant made an initial appearance and pled not guilty to the charge in the Indictment on  
17 February 8, 2013. *See* Minutes of Proceedings (Dkt. #8).

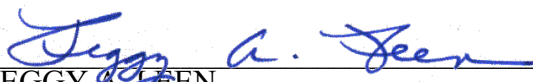
18 Felix's Motion requests an order directing the government to produce the grand jury testimony  
19 in this case. As an initial matter, although Defendant Felix is represented by counsel, he filed this  
20 Motion *pro se*. Local Rule IA 10-6 provides that a party who has appeared through counsel may not  
21 appear or act in a case while so represented. LR IA 10-6(a). "An attorney who has appeared for a party  
22 shall be recognized by the Court and all the parties as having control of the client's case." *Id.* Second,  
23 Felix has not complied with Local Rule of Criminal Practice 16-1(c) which requires that before filing  
24 any motion for discovery, the moving party shall confer with opposing counsel in a good faith effort to  
25 resolve the discovery dispute. LCR 16-1(c). The Motion must contain a statement certifying that, after  
26 personal consultation, the parties have been unable to resolve the dispute without court intervention. *Id.*  
27 Felix's Motion contains no such certification. The Motion should be denied on these procedural bases  
28 alone.

1           However, on the merits, the Motion must be denied as well. It is well-settled that in federal  
2 court, the production of grand jury minutes or transcripts is proper only where the defense shows a  
3 “particularized need” for such testimonial records, and that need outweighs the policy of secrecy in  
4 grand jury proceedings. *See United States v. Hearst*, 412 F. Supp. 863, 869 (9th Cir. 1975) (citing  
5 *Pittsburgh Plate Glass Co. v. United States*, 360 U.S. 395, 400 (1959)). Here, the Motion’s conclusory  
6 assertion that the transcripts are required to “avoid injustice by potential exculpatory evidence that may  
7 be contained in such proceedings” does not satisfy this standard. Even if Felix had set forth a  
8 particularized need for the transcripts, 18 U.S.C. § 3500(a)<sup>1</sup> only allows production of a government  
9 witness’ statement *after* that witness has testified at trial. Thus, the defendant has no right to pretrial  
10 discovery of testimony before the grand jury. *See Hearst*, 412 F. Supp. at 869 (internal citations  
11 omitted).

12           For all of these reasons,

13           **IT IS ORDERED** that Defendant’s Motion for Production of Grand Jury Transcript (Dkt. #27)  
14 is DENIED.

15           Dated this 19th day of July, 2013.

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19           PEGGY A. LEEN  
20           UNITED STATES MAGISTRATE JUDGE  
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27           <sup>1</sup>18 U.S.C. § 3500(e)(3) provides that transcripts of grand jury testimony are included in the  
28 definition of “statements” of government witnesses subject to the Jencks Act’s production requirement.